

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES E. PAPPAS, : CIVIL ACTION
 :
 v. :
 :
 UNUM LIFE INSURANCE COMPANY : NO. 97-7162

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND FINAL JUDGMENT**

HUTTON, J.

August 10, 2000

Plaintiff, on or about October 23, 1997, filed a state court complaint against Defendant UNUM Life Insurance Company ("UNUM" or "Defendant") which, inter alia, alleged UNUM acted in bad faith in determining his claim for disability benefits. On or about, November 21, 1997, Defendant removed the above captioned action to the United States District Court for the Eastern District of Pennsylvania. Thereafter, Defendant asserted counterclaims for a Declaratory Judgment, unjust enrichment, and overpayment of benefits. A trial on the merits commenced on July 18, 2000. On July 24, 2000, the Court granted Defendant's Rule 50 Motion, finding as a matter of law in favor of Defendant on Plaintiff's claims.

On July 25, 2000, the Court, in a bench trial, heard Defendant's equitable counterclaims for a Declaratory Judgment and Unjust Enrichment. Defendant abandoned its claim for overpayment of benefits. Pursuant to Federal Rule of Civil Procedure 52(a),

the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Plaintiff purchased two individual disability income policies from UNUM.

2. The benefits payable under Plaintiff's policies were testified to at trial by Constance M. Cardamone, manager of the Portland Certified Public Accountant Team for UNUM. (See 7/25/00 Trans. at 6-34).

3. Disability benefits under policy LAD044461 are divided into two Coverage Groups, one providing for a maximum benefit of \$4,339 per month, and the other providing for a maximum benefit of \$3,100 per month. (See 7/25/00 Trans. at 9-11).

4. Disability benefits under policy LAD049933 insured a single coverage group with a maximum benefit of \$6,199 per month. (See 7/25/00 Trans. at 12-13).

5. Initially, Plaintiff's policy LAD044461 contained a Cost of Living Adjustment ("COLA") rider which was applicable only to Coverage Group Two. (See 7/25/00 Trans. at 11).

6. Plaintiff was not entitled to purchase COLA increases under Policy Rider CLC86 as he did not satisfy the requirements of such entitlement; specifically that the Maximum Disability Benefit had not been adjusted pursuant to the rider while the insured was under a previous disability. (See 7/25/00 Trans. at 14-15).

7. On or about May 31, 1991, Plaintiff completed and submitted an Application for Change with respect to policies LAD044461 and LAD049933, requesting COLA benefits on the portions of the policies which were not subject to such benefit. (See 7/25/00 Trans. at 12).

8. Said Application for Change is by its terms preliminary with respect to its coverage as the language of the Agreement states that "the company will rely on the information provided in this application and any subsequent medical exams or tests and other questionnaires to determine whether to provide the requested coverage."

9. Plaintiff in the Application for Change represented that he had carpal tunnel syndrome but had a "good recovery."

10. As a result of Plaintiff's disclosure of his medical history and Defendant's investigation, the COLA benefits for which Plaintiff applied under the Application for Change were subject to an Exclusion Rider which states that "no benefit of any kind or amount is payable to anyone for any loss, impairment or disability due to, contributed to by, or resulting from carpal tunnel syndrome; radiculopathy or injury, disease or disorder of the cervical spinal region"

11. Plaintiff signed the Exclusion Rider on or about November 5, 1991, with an effective date of October 14, 1991, containing the language "once this Exclusion Rider is signed, it

binds all persons claiming any interest under the policy."

12. On or about August 15, 1994, Plaintiff filed an Individual Disability Claim Form for benefits under his policies for a disabling condition due to "pain [in] shoulders and hands; numbness and weakness [in] hands []; from MVA."

13. On or about August 30, 1994, Plaintiff's physician, Ronald J. Horvath, M.D., completed an Attending Physician Statement which states that Plaintiff's primary diagnosis is "cervical disk syndrome, traumatic bilateral carpal tunnel [syndrome]."

14. Plaintiff confirmed this diagnosis when he testified as a Medical Doctor and Surgeon. Such testimony reads as follows:

Q: Doctor, do you have an opinion based on a reasonable degree of medical certainty as to whether the problems that you are experiencing, the numbness in your fingers and in your hand are related to the cervical radiculopathy, the carpal tunnel or some other source? . . .

A: I believe that the answer is yes. The dominant reason is due to radiculopathy and the inception of carpal tunnel syndrome following the accident. There are other reasons And it is the opinion of those who have seen me since professionally that there may have been a problem or a reaction to the surgery. Maybe something happened surgically that caused the problem.

(See 7/25/00 Trans. at 39-40 (emphasis added)).

15. By the terms of the Exclusion Rider injuries "due to, contributed to by, or resulting from carpal tunnel syndrome; radiculopathy or injury, disease or disorder of the cervical spinal region . . ." are explicitly excluded from the benefits provided under the COLA riders effective October 14, 1991.

16. As a result of the complexity in determining the

amount of Plaintiff's underlying disability claim, Rebekah Groves, an employee of UNUM, testified that although COLA benefits had been paid since 1994, it was not until August 1998 that UNUM discovered that it may be incorrectly paying COLA benefits and that such error was the result of an oversight due to "a lot of back and forth, back and forth with the financial unit in adjusting the benefits and changing the date of loss that it was just something that kind of got lost in the shuffle." (See 7/19/00 Trans. at 152-53). Given the complexity of Plaintiff's claim, as evidenced by the entire testimony of both Plaintiff and Defendant throughout the trial, the Court finds Rebekah Groves' explanation credible.

17. Through the testimony of Constance M. Cardamone, Defendant demonstrated that through January 1, 2000, UNUM had paid a total of \$88,361.23 under the COLA riders which were subject to the Exclusion Rider. (See 7/25/00 Trans. at 23-29).

18. UNUM is currently paying \$2,792.54 per month under the excluded COLA riders, thereby bringing the current total of COLA payments to \$110,701.55. (See 7/25/00 Trans. at 29).

19. Plaintiff's disability policies do not contain a provision for recovering incorrectly paid COLA benefits.

II. CONCLUSIONS OF LAW

1. The right to a jury trial in federal court, regardless of whether the claim arises under state law, presents a question of federal law. See City of Philadelphia Litigation v. City of

Philadelphia, 158 F.3d 723, 726 (3d Cir. 1998).

2. As a general rule, the right to a jury trial is protected by the Seventh Amendment, when the claim is a legal one, but not if it is equitable. See Hatco Corporation v. W.R. Grace & Co., 59 F.3d 400, 411 (3d Cir. 1995).

3. The Court has discretion to afford declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 (1994). In exercising such discretion the Court should consider the following factors: (1) the likelihood that the declaration will resolve the uncertainty of obligation which gave rise to the controversy; (2) the convenience of the parties; (3) the public interest in a settlement of the uncertainty of obligation; and (4) the availability and relative convenience of other remedies. See Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1213, 1124 (3d Cir. 1989).

4. Unjust enrichment under Pennsylvania Law is a claim sounding in equity. See Meehan v. Cheltenham Twp., 410 Pa. 446 (Pa. 1963). The essential elements of a counterclaim of unjust enrichment are benefits conferred upon plaintiff, appreciation of such benefits by plaintiff, and the acceptance and retention of such benefits under circumstances that would make it inequitable for plaintiff to retain the benefit without payment for value. See Metropolitan Life Insurance Co. v. Brown, No. CIV.A.97-2002, 1998 WL 1084680, at *4 (W.D. Pa. Dec. 1, 1998); see also Burgettstown-

Smith Twp. Joint Sewage Authority v. Langeloth Townsite Co., 403 Pa. Super. 84, 88 (Pa. Super. Ct. 1991).

5. Defendant has no adequate remedy at law to recover incorrectly paid COLA benefits, thus it asserts equitable counterclaims for Declaratory Judgment and Unjust Enrichment.

6. Under Pennsylvania law, an insurer may recover payments to the insured under a mistake of fact or as a result of fraud or misrepresentation. See Van Riper v. The Equitable Life Assur. Soc., 561 F. Supp. 26, 33 (E.D. Pa. 1982), aff'd, 707 F.2d 1397 (3d Cir. 1983); see also Foster v. Federal Reserve Bank of Philadelphia, 113 F.2d 326, 327-28 (3d Cir. 1940).

7. An agreement may not be avoided, regardless of consideration, if it contains language (in any form) that the signer intends to be legally bound. See 33 P.S. § 6 (1997).

8. The COLA Exclusion Rider was issued pursuant to the unambiguous terms of Plaintiff's Application of Change as said application explicitly contemplates UNUM's investigation of Plaintiff's medical history prior to the issuance of modified coverage. Nevertheless, the Exclusion Rider is enforceable independently as it expresses an intent by the signer to be legally bound as evidenced by the language "once this Exclusion Rider is signed, it binds all persons claiming any interest under the policy." See 33 P.S. § 6 (1997).

9. The terms of the Exclusion Rider are unambiguous in

that it excludes payment of COLA benefits that are "due to, contributed to by, or resulting from carpal tunnel syndrome; radiculopathy or injury, disease or disorder of the cervical spinal region"

10. By a preponderance of the evidence Defendant has shown that Plaintiff's COLA benefits, effective October 14, 1991, are subject to exclusion as Plaintiff's injuries are at a minimum "contributed to by" radiculopathy and/or carpal tunnel syndrome. Specifically the Court finds Plaintiff's Application for Disability Benefits, Plaintiff's Attending Physician Statement, and Plaintiff's July 25, 2000, testimony concerning the nature of his disability persuasive on this issue. See 7/25/00 Trans. at 39-40).

11. Defendant has demonstrated that the disputed COLA benefits were paid to Plaintiff upon a mistake of fact due to an administrative and/or clerical oversight.

12. Plaintiff has received COLA benefits which were subject to the Exclusion Rider in the amount of \$110,701.55.

13. As Plaintiff was aware that the Exclusion Rider applied to injuries "due to, contributed to by, or resulting from carpal tunnel syndrome; radiculopathy or injury, disease or disorder of the cervical spinal region" the Court finds that it would be inequitable for Plaintiff to retain benefits to which he was not entitled.

14. Upon considering the appropriate factors with respect

to the issuance of a Declaratory Judgment, the Court finds that such considerations weigh in favor of issuance. Such action will alleviate the need for further litigation over Plaintiff's future entitlement to COLA benefits, serves no hardship upon the Plaintiff, furthers the convenience of the parties, clarifies Defendant's requirements under an otherwise uncertain obligation, and is an appropriate remedy as Defendant has no adequate remedy at law.

This Court's Final Judgment follows.

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CHARLES E. PAPPAS,	:	CIVIL ACTION
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v.	:	
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UNUM LIFE INSURANCE COMPANY	:	NO. 97-7162

FINAL JUDGMENT

AND NOW, this 10th day of August, 2000, pursuant to Federal Rules of Civil Procedure 52(a) and 58, IT IS HEREBY ORDERED that judgment in the amount of \$110,701.55 is entered in favor of Defendant and against Plaintiff Charles E. Pappas.

IT IS HEREBY FURTHER ORDERED that pursuant to 28 U.S.C. § 2201, the Court Orders that Defendant UNUM Life Insurance Company has no further obligation to provide Plaintiff, Charles E. Pappas, COLA benefits on his ongoing disability claim with respect to COLA benefits with an effective date of October 14, 1991.

BY THE COURT:

HERBERT J. HUTTON, J.